

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995
SUBMISSIONS

Note: As part of the October 2017 Interim Final Rules, the Department notified the public of its intention to merge this ICR with the ICR approved under OMB Control Number 1210-0152. Previously, the burden for non-profit firms was approved under this ICR and the for-profit firms' burden was included under 1210-0152. The Department is now combining the burden for both types of private sector businesses into this ICR (1210-0150) since they both use the same form. Going forward, all burden used for this form will be reported under one ICR and the ICR approved under OMB Control Number 1210-0152 will be discontinued. This administrative recordkeeping change has no policy impact on the public. Revisions to the ICR also reflect the 2018 Final Rule.

Part A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010 and amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 on March 30, 2010. The Affordable Care Act added section 2713 to the Public Health Service (PHS) Act and incorporated this provision into the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code). The Departments of Health and Human Services, Labor, and Treasury (the Departments) published interim final rules (2010 interim final rules) on July 19, 2010 to require non-grandfathered group health insurance coverage to provide benefits for certain preventive services without cost sharing, including benefits for certain women's preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).

On August 1, 2011, HRSA adopted and released guidelines for women's preventive health services, including contraceptive services. On August 3, 2011, the Departments amended the 2010 interim final rules (2011 amended interim final rules) to provide HRSA with the authority to exempt group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) from the requirement to cover contraceptive services consistent with the HRSA guidelines. The 2011 amended interim final rules specified a definition of religious employer. HRSA exercised its authority in its guidelines to exempt plans established or maintained by religious employers (and group health insurance coverage

provided in connection with such plans) from the requirement to cover contraceptive services.

On February 10, 2012, the Departments issued final rules that adopted the definition of religious employer in the 2011 amended interim final rules without modification (2012 final regulations) and issued guidance establishing a one year enforcement safe harbor for group health plans established or maintained by certain nonprofit organizations with religious objections to contraceptive coverage (and group health insurance provided in connection with such plans). The guidance provided that the temporary enforcement safe harbor would remain in effect until the first plan year beginning on or after August 1, 2013. On March 21, 2012, the Departments published an advance notice of proposed rulemaking that described and solicited comments on possible approaches to achieve the goals of providing coverage of recommended preventive services, including contraceptive services, without cost sharing, while simultaneously protecting certain additional nonprofit organizations with religious objections to contraceptive coverage from having to contract, arrange, pay, or refer for such coverage.

On February 6, 2013, the Departments published proposed rules that proposed to simplify and clarify the definition of religious employer and also proposed accommodations for health coverage established or maintained or arranged by certain nonprofit religious organizations with religious objections to contraceptive services (eligible organizations). The rules proposed that, for insured plans, the health insurance issuer providing group health insurance coverage in connection with the plan would be required to assume sole responsibility, independent of the eligible organization and its plan, for providing contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. In the case of self-insured plans, the proposed regulations presented potential approaches under which the third party administrator of the plan would provide or arrange for a third party to provide separate contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. The Departments received over 400,000 comments (many of them standardized form letters) in response to the proposed regulations.

After consideration of the comments, the Departments published final regulations on July 2, 2013. A contemporaneously-issued HHS guidance document extended the temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. This guidance included a form to be used by an organization during this temporary period to self-certify that its plan qualifies for the temporary enforcement safe harbor. In addition, HHS and the Department of Labor also issued a self-certification form, EBSA Form 700, to be executed by an organization seeking to be treated as an

eligible organization for purposes of an accommodation under these final regulations. This self-certification form was provided for use with the accommodations under the July 2013 final regulations, after the expiration of the temporary enforcement safe harbor (that is, for plan years beginning on or after January 1, 2014). The rules also provide that the third party administrator and issuer that is required to provide or arrange payments for contraceptive services must provide plan participants and beneficiaries with written notice of the availability of separate payments for contraceptive services contemporaneous with, but separate from, any application materials distributed in connection with enrollment for group health coverage for each plan year to which the accommodation is to apply. The EBSA Form 700 and the notice to HHS are information collection requests (ICRs) subject to the Paperwork Reduction Act.

2014 IFR Revision and 2015 Final Rule

On July 3, 2014, the Supreme Court of the United States issued an interim order in connection with an application for an injunction in the pending case of Wheaton College v. Burwell, ruling that, “[i]f [Wheaton College] informs the Secretary of Health and Human Services in writing that it is a non-profit organization that holds itself out as religious and has religious objections to providing coverage for contraceptive services, the [Departments of Labor, Health and Human Services, and the Treasury] are enjoined from enforcing against [Wheaton College]” certain provisions of the Affordable Care Act and related regulations requiring coverage without cost-sharing of certain contraceptive services “pending final disposition of appellate review” (the “order”). The order stated that Wheaton College need not use EBSA Form 700 or send a copy of the executed form to its health insurance issuers or third party administrators to meet the condition for this injunctive relief. The order also stated that it neither affected “the ability of [Wheaton College’s] employees and students to obtain, without cost, the full range of FDA approved contraceptives,” nor precluded the Government from relying on the notice it receives from Wheaton College “to facilitate the provision of full contraceptive coverage under the Act.”

The Departments issued interim final regulations on August 27, 2014 (79 FR 51092), providing that an eligible organization that has religious objection to providing contraceptive coverage may submit a notification to HHS as an alternative to submitting the EBSA Form 700 to the eligible organization’s health insurance issuer or third party administrator. The 2014 interim final regulations preserve participants’ and beneficiaries’ access to coverage for the full range of FDA-approved contraceptives, as prescribed by a health care provider, without cost sharing, which is also consistent with the Supreme Court’s Wheaton College order.

The Departments published proposed regulations on August 27, 2014 (79 FR 51118) (2014 proposed regulations), which proposed potential changes to the definition of

“eligible organization” in light of the United States Supreme Court’s decision in *Burwell v. Hobby Lobby Stores, Inc.* The decision held that closely held for-profit corporations qualified for an exemption under the Religious Freedom Restoration Act from the requirement to provide contraceptive coverage because the owners had religious objections to such coverage and there was a less restrictive means of furthering the law’s interest, specifically, the accommodation the Government provided to non-profit organizations with religious objections.

The final regulations titled “Coverage of Certain Preventive Services Under the Affordable Care Act” modify the Departments’ 2013 final regulations in light of the Supreme Court’s decision in *Burwell v. Hobby Lobby Stores, Inc.* Under these final regulations, qualifying closely held, for-profit entities may now avail themselves of the accommodation to effectively exempt them from the otherwise applicable requirement to cover certain contraceptive services. This accommodation was previously available only to non-profit eligible organizations. The final regulations also finalize the 2014 interim final regulations that permit an eligible organization to notify HHS directly that it will not contract, arrange, pay for, or refer all or a subset of, contraceptive services.

To avoid contracting, arranging, paying, or referring for contraceptive coverage, an organization seeking to be treated as an eligible organization under the final regulations may self-certify (by using EBSA Form 700), prior to the beginning of the first plan year to which an accommodation is to apply, that it meets the definition of an eligible organization. The self-certification must be executed by an authorized representative of the organization. The self-certification will not be submitted to any of the Departments. The organization must maintain the self-certification in its records in a manner consistent with ERISA section 107 and make it available for examination upon request. The eligible organization must provide a copy of its self-certification to each health insurance issuer that would otherwise provide such coverage in connection with the health plan (for insured group health plans or student health insurance coverage). The issuer that receives the self-certification must provide for separate payments for contraceptive services for plan participants and beneficiaries (or students and dependents). For a self-insured group health plan, the self-certification must be provided to its third party administrator. An eligible organization may also submit a notification to HHS as an alternative to submitting the EBSA Form 700 to the eligible organization’s health insurance issuer or third party administrator.

A health insurance issuer or third party administrator providing or arranging payments for contraceptive services for participants and beneficiaries in plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations must provide a written notice to such plan participants and beneficiaries (or such student enrollees and covered dependents) informing them of the availability of such payments. The notice must be provided contemporaneously with (to the extent possible) but separate from any application materials distributed in connection with enrollment (or re-

enrollment) in group or student health coverage that is effective on the first day of each applicable plan year, and must specify that contraceptive coverage will not be funded or administered by the eligible organization but that the issuer or third party administrator, as applicable, will separately arrange or provide payments for contraceptive services. The notice must also provide contact information for the issuer or third party administrator for questions and complaints. To satisfy the notice requirement, issuers and third party administrators may use the model language set forth in the 2013 final regulations or substantially similar language.

The final regulations require each closely held, for-profit entity seeking to be treated as an eligible organization to provide notification that it will not act as the plan administrator or claims administrator with respect to, or contribute to the funding of, coverage of all or a subset of contraceptive services. Issuers and third party administrators providing payments for contraceptive services for participants and beneficiaries in plans of eligible organizations are required to meet the notice requirements as set forth in the 2013 final regulations. The Department anticipates that approximately 87 closely held for-profit employers will opt for this accommodation. The final regulations allow eligible organizations to notify an issuer or third party administrator that it will not contract, arrange, pay for, or refer contraceptive services based on a religious objection, by using EBSA Form 700, as set forth in the 2013 final regulations. In addition, the final regulations continue to permit an alternative process, consistent with the Supreme Court's Wheaton interim order, under which an eligible organization can notify the Secretary of HHS that it will not contract, arrange, pay for, or refer contraceptive services based on a religious objection, as originally permitted under the August 2014 interim final regulations.

All eligible organizations, whether they are non-profit or closely held for-profit entities, will have the option of providing a self-certification to the issuers or third party administrators of their group health plans (or issuers of their student health plans) or providing a notification to the Department.

2017 Interim Final Rules and 2018 Final Rules

The 2017 interim final rules and the 2018 final rules amend the Departments' July 2015 final regulations to expand the exemption to include additional entities (any kind of employer) and persons that object based on religious beliefs or moral convictions objecting to contraceptive or sterilization coverage, and by making the accommodation compliance process optional for eligible organizations instead of mandatory. These rules leave in place HRSA's discretion to continue to require contraceptive and sterilization coverage where no objection exists, and to the extent that PHS Act section 2713 otherwise applies. With respect to employers, the expanded exemption in these rules covers employers that have religious beliefs or moral convictions objecting to coverage

of all or a subset of contraceptives or sterilization and related patient education and counseling. While the rules cover any kind of employer, for the sake of clarity, these regulations also include an illustrative list of employers whose objection qualifies the plans they sponsor for an exemption.

Consistent with the current exemption, exempt entities will not be required to comply with a self-certification process. Although exempt entities do not need to file notices or certifications of their exemption, existing rules governing health plans require that a plan document specify what is and is not covered. Thus where an exemption applies and all or a subset of contraception is omitted from a plan's coverage, the plan document and otherwise applicable ERISA disclosures¹ should reflect the omission of coverage. This is not an added obligation, but it will serve to help provide notice of what plans do and do not cover.

As in the previous rule, institutions of higher education that arrange student health insurance coverage will continue to be treated similar to the way employers are treated for the purposes of such plans being exempt. These final rules also exempt group health plans sponsored by an entity other than an employer, and health insurance issuers in the group and individual market, that object based on religious beliefs or moral convictions to coverage of contraceptives or sterilization. The rules also exempt health coverage offered or provided to certain individuals with their own religious or moral objections.

Employers that under the previous rules had used the accommodation process, but can now be exempt may now choose to revoke their use of the accommodation process, but in order to do so they must provide participants and beneficiaries written notice of such revocation as soon as possible.

Previously, the burden for non-profit firms was approved under 1210-0150 and the for-profit firms' burden was included under 1210-0152. The Department is combining the burden for both types of private sector businesses into this ICR (1210-0150) since they both use the same form. Going forward, all burden used for this form will be reported under one ICR.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

The requirement to provide a self-certification or notice to HHS, insurer, or a third party administrator is an optional third-party reporting disclosure. These disclosures are optional to exempt eligible organizations from contracting, arranging, paying, or referring for contraceptive coverage, but do make it possible for participants in plans to receive coverage for services from which employers sought the exemption. Eligible

¹ See, e.g., 29 CFR 2520.104b-3(d).

organizations using the accommodation must maintain the self-certification or notice to HHS in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be maintained for six years. The notices sent by issuers and third party administrators will inform plan participants and beneficiaries (or student enrollees and covered dependents) of the availability of such payments.

Employers that under the previous rules had used the accommodation process, but can now be exempt may now choose to revoke their use of the accommodation process, but in order to do so they must provide participants and beneficiaries written notice of such revocation as soon as possible, so participants and beneficiaries will know their benefit coverage.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.*

The regulations do not limit the ability of affected eligible organizations to furnish the self-certification or notice to HHS via electronic media.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The information collection does not require duplicative information.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

The eligible organization only has to complete the self-certification or notice to HHS one time, unless there is a change in its qualifications as an eligible organization, religious objection, health insurance issuer, or third party administrator.

If completing the EBSA Form 700, the eligible organization may maintain the self-certification in its own records after it is provided to issuers or third party administrators (as outlined in the final regulations), and is not required to submit it to the government. If providing notice to HHS, the eligible organization may maintain the notice in its own records after it is provided to the government. The eligible organization may provide the self-certification electronically to further reduce burden.

For eligible organizations that provide notice to HHS, the Departments are providing model language that can be used to satisfy the notice requirement to minimize burden.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

While the notice is optional, if eligible organizations do not provide the self-certification to issuers and third party administrators or notice to HHS, issuers and third party administrators will not be able to make or arrange for separate payments for contraceptive services. If issuers and third party administrators do not send notices to enrollees, plan participants and beneficiaries (or student enrollees and covered dependents) will not have access to separate payments for contraceptive services without cost sharing.

If the accommodation is revoked, participants need to receive the notice of revocation to know their coverage options.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*

- *requiring respondents to report information to the agency more often than quarterly;*
- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document;*
- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

The regulations require the self-certification or notice to HHS to be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be kept for six years.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department's Federal Register notice required by 5 CFR 1320.8(d) providing the public with 60 days to comment was published in the Federal Register on October 13, 2017 (82 FR 47769). The Department received three comment letters. Two of the comment letters were opposed to the coverage of certain preventative services, such as the insurance coverage for birth control, because the commenters expressed the view that such coverage violates religious freedom protections. These commenters provided substantive comments regarding the rule itself, but did not comment on the information collection requirements as requested in the Department's solicitation. The third commenter stated that the Department could not go forward with the information collection because the Interim Final Rules are unconstitutional and illegal and there are currently two preliminary injunctions against them. However, this comment is outside the scope of the Department's comment solicitation regarding the information collection as well.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

Not applicable.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

Not applicable.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Not applicable.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.*

The Department is not able to estimate how many organizations would utilize this optional accommodation process or take advantage of exempt status. It was observed in the August 2014 interim final rules that there were 122 eligible entities that had filed litigation against the accommodation process, and in the July 2015 final regulations it was estimated that there were 87 closely held for-profit entities that would seek the accommodation for a total of 209 entities. (79 FR 51096; 80 FR 41336) Under the exemptions and optional accommodation process in these interim final rules, the Department anticipates that all of the entities that have brought litigation against the accommodation process will not opt into it, but will make use of their exempt status, and that most for-profit entities (which had brought a similar round of lawsuits against the Department before the accommodation process was expanded to include them) will also not make use of the optional accommodation process. But, because the exemption is expanded, it is anticipated that some newly exempt entities might make use of the accommodation process. The Department estimates that in total far fewer entities will opt into the accommodation process than have brought litigation against it or have used it while litigation over the accommodation was pending. For the purposes of this calculation, therefore, it is estimated that no more than 100 entities will opt into the accommodation process and 109 entities will revoke their use of the process as exempt entities. It is assumed that an additional nine entities will use the expanded accommodation process for a total of 109 entities using the accommodation process and 109 entities that will revoke their use of the accommodation process. It is also estimated that there will be no morally objecting firms that will elect to use the accommodation

process; instead they will use claim exempt status. Therefore no burden is attributed to these entities.

The Department estimates that 2,184,000 plan participants and beneficiaries will be covered in the plans of the 100 entities that previously used the accommodation and will continue doing so, and that an additional 9 entities will newly opt into the accommodation. We reach this estimate using calculations set forth above, in which we used 2017 data available to HHS for contraceptive user fees adjustments to estimate that 2,912,000 plan participants and beneficiaries were covered by plans using the accommodation. We further estimated that the 100 entities that previously used the accommodation and will continue doing so will cover approximately 75 percent of the persons in all accommodated plans, based on HHS data concerning accommodated self-insured plans that indicates plans sponsored by religious hospitals and health systems encompass more than 80 percent of the persons covered in such plans. In other words, plans sponsored by such entities have a proportionately larger number of covered persons than do plans sponsored by other accommodated entities, which have smaller numbers of covered persons. As noted above, many religious hospitals and health systems have indicated that they do not object to the accommodation, and some of those entities might also qualify as self-insured church plans. The Department does not have specific data on which plans of which employer sizes will actually continue to opt into the accommodation, nor how many will make use of self-insured church plan status. The Department assumes that the proportions of covered persons in self-insured plans using contraceptive user fees adjustments also apply in fully insured plans, for which we lack representative data.

Based on these assumptions and without better data available, the Department estimates that- previously accommodated entities encompassed approximately 2,912,000 persons; the estimated 100 entities that previously used the accommodation and continue to use it will account for 75 percent of those persons (that is 2,184,000 persons); and the estimated 109 entities that previously used the accommodation and will now use their exempt status and will account for 25 percent of those persons (that is, 728,000 persons). It is not known how many persons will be covered in the plans of the 9 entities we estimate will newly use the accommodation. Assuming that those 9 entities will have a similar number of covered persons per entity as the 100 entities encompassing 2,184,000 persons, the Department estimates that all 109 accommodated entities will encompass 2,381,000 covered persons.

The Department assumes that sending one notice to each policyholder will satisfy the need to send the notices to all participants and dependents. Among persons covered by insurance plans sponsored by large employers in the private sector, approximately 50.1

percent are participants and 49.9 percent are dependents.² For 109 entities, the total number of policy holders needing to receive notices will be 1,208,045.

The Department estimates that 369,433 policy holders covered in accommodated plans that will now revoke their accommodated status and use the expanded exemption.

A. ICRs Regarding Self-Certification or Notices to HHS (§147.131(c)(3))

Each organization seeking to be treated as an eligible organization to use the optional accommodation process offered under these interim final regulations must either use the EBSA Form 700 method of self-certification or provide notice to HHS of its religious or moral objection to coverage of all or a subset of contraceptive services. Specifically, these final regulations continue to allow eligible organizations to notify an issuer or third party administrator using EBSA Form 700, or to notify HHS of its religious or moral objection to coverage of all or a subset of contraceptive services, as set forth in the July 2015 final regulations.

In order to estimate the cost for an entity that chooses to opt into the accommodation process, it is assumed, as it was in its August 2014 interim final rules, that clerical staff for each eligible organization will gather and enter the necessary information and send the self-certification to the issuer or third party administrator as appropriate, or send the notice to HHS.³ It is assumed that a compensation and benefits manager and inside legal counsel will review the self-certification or notice to HHS and a senior executive would execute it. It is estimated that an eligible organization would spend approximately 50 minutes (30 minutes of clerical labor at a cost of \$55.68 per hour, 10 minutes for a compensation and benefits manager at a cost of \$122.02 per hour, 5 minutes for legal counsel at a cost of \$134.50 per hour, and 5 minutes by a senior executive at a cost of \$186.88 per hour)⁴ preparing and sending the self-certification or notice to HHS and filing it to meet the recordkeeping requirement. Therefore, the total annual burden for preparing and providing the information in the self-certification or notice to HHS will require approximately 50 minutes for each eligible organization with an equivalent cost burden of approximately \$74.96 for a total hour burden of approximately 7.5 hours with

² “Health Insurance Coverage Bulletin” Table 4, page 21. Using Data for the March 2016 Annual Social and Economic Supplement to the Current Population Survey.
<https://www.dol.gov/sites/default/files/ebsa/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2016.pdf>.

³ For purposes of this analysis, the Department assumes that the same amount of time will be required to prepare the self-certification and the notice to HHS.

⁴ Occupation codes 43-6011 for Executive Secretaries and Executive Administrative Assistants with mean hourly wage \$27.84, 11-3111 for Compensation and Benefits Managers with mean hourly wage \$61.01, 23-1011 for Lawyers with mean hourly wage \$67.25, and 11-1011 for Chief Executives with mean hourly wage \$93.44.

an equivalent cost of approximately \$675 for 9 entities. As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the hour burden so each will account for approximately **3.75 burden hours with an equivalent cost of approximately \$337 for 5 entities.**

B. ICRs Regarding Notice of Availability of Separate Payments for Contraceptive Services (§147.131(e))

As required by the July 2015 final regulations, a health insurance issuer or third party administrator providing or arranging separate payments for contraceptive services for participants and beneficiaries in insured plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations is required to provide a written notice to plan participants and beneficiaries (or student enrollees and covered dependents) informing them of the availability of such payments. The notice must be separate from but contemporaneous with (to the extent possible) any application materials distributed in connection with enrollment (or re-enrollment) in group or student coverage of the eligible organization in any plan year to which the accommodation is to apply and will be provided annually. To satisfy the notice requirement, issuers may, but are not required to, use the model language set forth previously or substantially similar language.

It is anticipated that approximately 109 entities will seek the optional accommodation (100 that used it previously, and 9 that will newly opt into it). It is unknown how many issuers or third party administrators provide health insurance coverage or services in connection with health plans of eligible organizations, but it is assumed at least 109. It is estimated that each issuer or third party administrator will need approximately 1 hour of clerical labor (at \$55.68 per hour)⁵ and 15 minutes of management review (at \$117.40 per hour)⁶ to prepare the notices. The total burden for each issuer or third party administrator to prepare notices will be 1.25 hours with an equivalent cost of approximately \$85.03. The total burden for all issuers or third party administrators will be 136 hours, with an equivalent cost of \$9,268. As DOL and HHS share jurisdiction, they are splitting the hour burden so each will account for **68 burden hours with an equivalent cost of \$4,634, with approximately 55 respondents.**

C. ICRs Regarding Notice of Revocation of Accommodation (§147.131(c)(4))

An eligible organization may revoke its use of the accommodation process and must provide participants and beneficiaries written notice of such revocation as soon as

⁵ Occupation code 43-6011 for Executive Secretaries and Executive Administrative Assistants with mean hourly wage \$27.84

⁶ Occupation code 11-1021 General and Operations Managers with mean hourly wage \$58.70

possible. The Department anticipates that 109 entities that are using the accommodation process will revoke its use and will therefore be required to send this notification. The Department assumes that for each entity, a compensation and benefits manager, inside legal counsel, and clerical staff will need approximately 2 hours to prepare and send the notification to participants and beneficiaries and maintain records (30 minutes for a manager at a cost of \$117.40 per hour, 30 minutes for legal counsel at a cost of \$134.50 per hour, 1 hour for clerical labor at a cost of \$55.68 per hour)⁷. The burden per respondent will be 2 hours with an equivalent cost of \$181.63. For the 109 affected entities, the total burden will be 218 hours with an equivalent cost of approximately \$19,798. As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the hour burden, so each will account for **109 burden hours with an equivalent cost of approximately \$9,898.**

The total hour burden for DOL for this entire ICR is 181 hours with an equivalent cost of \$14,870.

13. *Provide an estimate of the total annual cost burden to respondents or record-keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12.)*

A. ICRs Regarding Self-Certification or Notices to HHS (§147.131(c)(3))

DOL estimates that each self-certification or notice to HHS will require \$0.49 in postage and \$0.05 in materials cost (paper and ink) and the total postage and materials cost for each self-certification or notice sent via mail will be \$0.54. For purposes of this analysis, DOL assumes that 50 percent of self-certifications or notices to HHS will be mailed. The total cost for sending the self-certifications or notices to HHS by mail is approximately \$2.70 for five entities. As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the cost burden so each will account for **\$1.35 of materials and postage cost burden.**

B. ICRs Regarding Notice of Availability of Separate Payments for Contraceptive

As discussed at the start of question 12 for the 109 entities, the total number of persons needing notices will be 1,190,613. For purposes of this analysis, the Departments also assume that 53.7 percent of notices will be sent electronically⁸. Therefore, approximately

⁷ Occupation codes 11-1021 General and Operations Managers with mean hourly wage \$58.70, 23-1011 for Lawyers with mean hourly wage \$67.25 and 43-6011 for Executive Secretaries and Executive Administrative Assistants with mean hourly wage \$27.84.

⁸ According to data from the National Telecommunications and Information Agency (NTIA), 36.0 percent of individuals age 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84

551,254 notices will be mailed. DOL estimates that each notice will require \$0.50 in postage and \$0.05 in materials cost (paper and ink) and the total postage and materials cost for each notice sent via mail will be \$0.55. The total cost for sending approximately 551,254 notices to by mail is approximately \$303,190. As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the cost burden so each will account for **\$151,595 of the materials and postage cost burden.**

C. ICRs Regarding Notice of Revocation of Accommodation (§147.131(c)(4))

As discussed at the start of question 12, DOL estimates that 364,102 policy holders will need to receive a revocation notice and that 53.7 percent of notices will be sent electronically. Therefore, approximately 168,579 notices will be mailed. DOL estimates that each notice will require \$0.50 in postage and \$0.05 in materials cost (paper and ink) and the total postage and materials cost for each notice sent via mail will be \$0.55. The total cost for sending approximately 168,579 notices by mail is approximately \$92,719. As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the cost burden so each will account for **\$46,360 of the materials and postage cost burden.**

The total cost burden for DOL for this ICR is \$197,955.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

None. No information is provided to the DOL.

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14.*

Changes to the estimates reflect the changes to which information collections are in force, due to an injunction and ongoing litigation. The for-profit firms' burden was included

percent of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt out that are automatically enrolled (for a total of 30.2 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 38.5 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61 percent of internet users use online banking, which is used as the proxy for the number of internet users who will opt in for electronic disclosure (for a total of 23.5 percent receiving electronic disclosure outside of work). Combining the 30.2 percent who receive electronic disclosure at work with the 23.5 percent who receive electronic disclosure outside of work produces a total of 53.7 percent who will receive electronic disclosure overall.

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previously under 1210-0152. The Department is combining the burden under 1210-0152 into this ICR, so all the burden for the data collections will be reported in one place.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

Not applicable.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

Not applicable.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission."*

Not applicable; no exceptions to the certification statement.

Part B. Statistical Methods.

This information collection does not employ statistical methods.